

AGREEMENT

THIS AGREEMENT dated this 14th day of December, 2004, by and between LEON COUNTY, a charter county and a political subdivision of the State of Florida, hereinafter referred to as the "County" and THE INGRAM GROUP, LLC, hereinafter referred to as the "Contractor."

WHEREAS, the County has determined that it would be in the best interest of the citizens of Leon County, Florida, that the County be able to utilize the services of private persons when such services cannot be reasonably provided by the County; and

WHEREAS, the County has determined that it would be better to contract for these services than to hire the necessary personnel to satisfy the needs of the County; and

WHEREAS, in order to secure the lowest cost for these services, the County has sought and received competitive bids from contractor for such services.

NOW, THEREFORE, the parties hereto agree as follows:

1. SERVICES TO BE PROVIDED

The Contractor hereby agrees to provide the following services to the County: Renovations and modifications to the Leon County Growth Management Building, 3401 W. Tharpe Street, Tallahassee, Florida. All work will be completed in accordance with the plans and specifications produce by Hammond Design Group, dated July 2004. All work will be done in accordance with the plans and specifications for Leon County bid number BC-11-18-04-05, said bid being incorporated into this agreement as if fully set out herein, to the extent it is not inconsistent with this Agreement.

2. WORK

Any work to be performed shall be upon the written request of the County Administrator or his designated representative, which request shall set forth the commencing date of such work and the time within which such work shall be completed.

The performance of Leon County of any of its obligations under the purchase order or agreement shall be subject to and contingent upon the availability of funds lawfully expendable for the purposes of the purchase order or agreement for the current and any future periods provided for within the bid specifications.

3. TIME AND LIQUIDATED DAMAGES

The work to be performed under this agreement shall be commenced within fifteen (15) days of the Notice to Proceed. All work to be performed under this Agreement shall be completed within Three-hundred (300) consecutive calendar days of the Notice to Proceed. If the work to be performed under this Agreement is not completed within the time set forth above, or within such extra time as may be granted in writing by the County, the Contractor shall be deemed to be in default. For each day the Contractor is in default, the Contractor or its Surety shall pay to the County, not as a penalty, but as liquidated damages, the sum of \$200.00.

Permitting the Contractor to continue and finish the work or any part of it after the expiration of the contract time allowed, including extensions, if any, shall in no way act as a waiver on the part of County of the liquidated damages due under the agreement.

4. CONTRACT SUM

The Contractor agrees that for the performance of the services as outlined above, it shall be remunerated by the County: according to the payment schedules contained in the Contractor's bid proposal for a total sum of \$957,000.00 on completion of the work and acceptance of it as satisfactory.

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5. PAYMENTS TO THE GENERAL CONTRACTOR

- a. Monthly Statements - The General Contractor shall submit to the County a sworn statement, along with the cost reports required, showing in detail all monies paid out, costs accumulated or cost incurred on account of the Cost of the Project during the previous period. This data shall be attached to the partial pay request form. Payment by the County to the General Contractor of the statement amount shall be made within thirty (30) days after approval of the Architect-Engineer and submitted to the County. Ten percent (10%) retainage shall be held at the discretion of the County and Architect, the 10% retainage may be reduced to 5% at 75% completion of the work.
- b. Final Payment - Final payment constituting the unpaid balance of the cost of the Project and the General Contractor's fee, shall be due and payable within 45 days after the Project is delivered to the County, finished and ready for beneficial occupancy, or when the County occupies the Project, whichever event first occurs provided that the Project be then substantially completed and this agreement substantially performed. However, if there should remain work to be completed, the General Contractor and the Architect-Engineer shall list those items prior to receiving final payment and the County may retain a sum equal to 200% of the estimated cost of completing any unfinished work and the applicable portion of the General Contractor's retainage, provided that said unfinished items are listed separately and estimated cost of completing any unfinished items are likewise listed separately. Thereafter, County shall pay to General Contractor, monthly, the amount retained from each incomplete item after each of said items is completed.
- c. Payments to Subcontractors - The General Contractor shall promptly, but not later than 10 days after receipt of payment from the County, pay all the amount due subcontractors less a retainage of ten percent (10%). If there should remain items to be completed, the General Contractor and Architect-Engineer shall list those items required for completion and the General Contractor shall require the retainage of a sum equal to 200% of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items likewise listed separately. Thereafter, The General Contractor shall pay to the subcontractors, monthly, the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the County's operating and maintenance personnel is complete. Final payment may be made to certain select subcontractors who work is satisfactorily completed prior to the total completion of the Project but only upon approval of the County.
- d. Delayed Payments by County - If the County shall fail to pay the General Contractor within 30 days after the receipt of an approved payment request from the General Contractor, then the General Contractor may, upon fourteen (14) additional days advance written notice to the County and the Architect-Engineer stop the Project until payment of the Amount owing has been received, provided that the payment request has been submitted in sufficient detail to comply with the guidelines of the Office of the Clerk of the Circuit Court for Leon County. In the event that there is a dispute in the amount of the pay request, then only the disputed amount shall be held until resolved and the undisputed amount shall be paid within the time limits as stated within this paragraph. If undisputed amounts are timely paid, then the General Contractor shall not stop the Project in any fashion and the progress of the project shall not be interrupted. Both parties agree that best efforts be made to resolve the disputed amount.
- e. Payment for Materials and Equipment - Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at the site (or another location, subject to prior approval and acceptance by the County on each occasion).
- f. Withholding Payments to Subcontractors - The General Contractor shall not withhold payments to subcontractors if such payments have been made to the General Contractor. Should the need, as

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solely determined by the General Contractor, to withhold payments to subcontractors occur, for any reason, the General Contractor shall immediately return such monies to the County, adjusting pay requests and project bookkeeping as required.

6. **STATUS**

The contractor at all times relevant to this Agreement shall be an independent contractor and in no event shall the Contractor nor any employees or sub-contractors under it be considered to be employees of Leon County.

7. **INSURANCE**

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors. The cost of such insurance shall be included in the Contractors bid.

1. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- a. General Liability: \$1,000,000 Combined Single Limit for bodily injury and property damage per occurrence with a \$2,000,000 annual aggregate. Completed operations coverage will be provided for a period of three (3) years beyond termination and/or completion of the project. Coverage must include bodily injury and property damage, including Premise/Operations; a per location aggregate, Broad Form Contractual liability; Broad Form Property Damage; Fire Legal liability; Independent Contractors coverage; Cross Liability & Severability of Interest Clauses; and Personal Injury (deleting employee and contractual exclusions), and coverage for explosion, collapse, and underground (X,C,U).
- b. Automobile Liability: One Million and 00/100 (\$1,000,000.00) Dollars combined single limit per accident for bodily injury and property damage. **(Non-owned, Hired Car).**
- c. Workers Compensation Employers Liability: Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws and Employers Liability with a limit of \$500,000 per accident, \$500,000 disease policy limit, \$500,000 disease each employee. **Waiver of Subrogation in lieu of Additional Insured is required.**
- d. Professional Liability Insurance, including errors and omissions: for all services provided under the terms of this agreement with minimum limits of One Million and 00/100 (\$1,000,000.00) Dollars per occurrence on an occurrence form; or claims made form with "tail coverage" extending three (3) years beyond the term of the agreement. Proof of "tail coverage" must be submitted with the invoice for final payment. In lieu of "tail coverage", Contractor may submit annually to the County a current Certificate of Insurance proving claims made insurance remains in force throughout the same three (3)-year period.
- e. Umbrella: \$5,000,000 combined single limit for bodily injury and property damage combined per occurrence and annual aggregate. The coverage shall provide excess coverage for employer's liability, general liability, including completed operations and auto liability.

Installation Floater: In the amount of the estimated cost of materials necessary to complete the contract. Should include temporary location, job site, and in transit coverage.
- g. Mobile Equipment (Contractors Equipment) coverage should be in place while job is in process. Equipment should be covered whether owned, leased, borrowed, or rented by contractor or by employees of the contractor.

2. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

3. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

a. General Liability and Automobile Liability Coverages (*County is to be named as Additional Insured*).

1. The County, its officers, officials, employees and volunteers are to be covered as additional insureds as respects; liability arising out of activities performed by or on behalf of the Contractor, including the insureds general supervision of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protections afforded the County, its officers, officials, employees or volunteers.
2. The Contractors insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance of self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractors insurance and shall not contribute with it. Contractor hereby waives subrogation rights for loss or damage against the county.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the county, its officers, officials, employees or volunteers.
4. The Contractor's insurance shall apply separately to each insured against whom claims is made or suit is brought, except with respect to the limits of the insurers liability.
5. Companies issuing the insurance policy, or policies, shall have no recourse against the County for payment of premiums or assessments for any deductibles with are all at the sole responsibility and risk of Contractor.

b. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.

4. Acceptability of Insurers

Insurance is to be placed with insurers with a Bests rating of no less than A:VII.

5. Verification of Coverage

Contractor shall furnish the County with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the County before work commences. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

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6. Subcontractors

Contractors shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

8. PERMITS

The County shall pay for all necessary permits as required by law.

9. LICENSES

The Contractor shall be responsible for obtaining and maintaining his city or county occupational license and any licenses required pursuant to the laws of Leon County, the City of Tallahassee, or the State of Florida. Should the Contractor, by reason of revocation, failure to renew, or any other reason, fail to maintain his license to operate, the contractor shall be in default as of the date such license is invalid.

10. ASSIGNMENTS

This Agreement shall not be assigned or sublet as a whole or in part without the written consent of the County nor shall the contractor assign any monies due or to become due to him hereunder without the previous written consent of the County.

11. PERFORMANCE BOND

A Performance Bond in the amount of 100% of the estimated project cost shall be supplied by the Contractor prior to agreement execution. Also, a payment and material bond for the agreement amount shall be supplied by the Contractor at the same time.

"Performance and Payment and Material Bonds shall provide that, in the event of non-performance on the part of the Contractor the bond can be presented for honor and acceptance at an authorized representative or institution located in Tallahassee, Florida. The performance bond must contain a clause stating the following:

In the event of non-performance on the part of the contractor this performance / payment and materials bond can be presented for honor and acceptance at _____ (address) _____, which is located in Tallahassee, Florida. "

12. HOLD HARMLESS

The Contractor agrees to indemnify and hold harmless the County from all claims, damages, liabilities, or suits of any nature whatsoever arising out of, because of, or due to the breach of this agreement by the Contractor, its delegates, agents or employees, or due to any act or occurrence of omission or commission of the Contractor, including but not limited to costs and a reasonable attorney's fee. The County may, at its sole option, defend itself or allow the Contractor to provide the defense. The Contractor acknowledges that ten dollars (\$10.00) of the amount paid to the Contractor is sufficient consideration for the Contractor's indemnification of the County.

13. MINORITY BUSINESS ENTERPRISE (M/WBE) PARTICIPATION

The Contractor shall meet or exceed the M/WBE participation levels stated in the M/WBE Participation Statement included as part of the bid response for this project, except when the County Good Faith Committee approves an exception. Any "Good Faith Statement" provided by a Contractor shall follow the requirements of the Florida Statutes, and must demonstrate through documentation that every reasonable effort has been made to achieve the requested percentage. For those M/WBE firms listed in their bid, Contractors shall be responsible for securing proof of their M/WBE certification and providing copies to the County M/WBE Office.

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Also required is a monthly reporting system of the work done by and payments made to certified minority business enterprises as a part of this project. The reports shall detail each invoice submitted to the County and a break down of payments to all subcontractors therein by M/WBE classification.

14. AUDITS, RECORDS, AND RECORDS RETENTION

The Contractor agrees:

- a. To establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices, which sufficiently and properly reflect all revenues and expenditures of funds provided by the County under this agreement.
- b. To retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this agreement for a period of five (5) years after termination of the agreement, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this agreement.
- c. Upon completion or termination of the agreement and at the request of the County, the Contractor will cooperate with the County to facilitate the duplication and transfer of any said records or documents during the required retention period as specified in paragraph 1 above.
- d. To assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, state, or other personnel duly authorized by the County.
- e. Persons duly authorized by the County and Federal auditors, pursuant to 45 CFR, Part 92.36(l)(10), shall have full access to and the right to examine any of provider's agreement and related records and documents, regardless of the form in which kept, at all reasonable times for as long as records are retained.
- f. To include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments.

15. MONITORING

To permit persons duly authorized by the County to inspect any records, papers, documents, facilities, goods, and services of the provider which are relevant to this agreement, and interview any clients and employees of the provider to assure the County of satisfactory performance of the terms and conditions of this agreement.

Following such evaluation, the County will deliver to the provider a written report of its findings and will include written recommendations with regard to the provider's performance of the terms and conditions of this agreement. The provider will correct all noted deficiencies identified by the County within the specified period of time set forth in the recommendations. The provider's failure to correct noted deficiencies may, at the sole and exclusive discretion of the County, result in any one or any combination of the following: (1) the provider being deemed in breach or default of this agreement; (2) the withholding of payments to the provider by the County; and (3) the termination of this agreement for cause.

16. FINAL INSPECTION

The Contractor shall maintain all work in first-class condition until it has been completed as a whole and been accepted by Leon County. Upon seven (7) days notice from the Contractor of completion of this project, the Director of Engineering Services will set up a semi-final inspection with the Contractor, the Chief of Construction Management, the Chief of Engineering, the Project Engineer, and himself.

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If, at the semi-final inspection, all construction provided for and contemplated by the agreement is completed to the County's satisfaction, such inspection shall constitute the final inspection. If, however, at any semi-final inspection any work is unsatisfactory, in whole or in part, the Contractor shall be given the necessary instructions as to the replacement of material and performance or re-performance, of work necessary and prerequisite as to final completion and acceptance, and the Contractor forthwith shall comply and execute such instructions. When all materials have been furnished, all work performed and all construction contemplated by the agreement satisfactorily completed, a written notice of final acceptance will be given to the Contractor.

17. **GUARANTEE OF WORK**

Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment or workmanship for one (1) year from the date of final acceptance in writing by the Chief of Construction Management. No express warranty or guarantee contained herein shall in any way limit, avoid, displace, or modify any implied warranties or guarantees owed by the Contractor to the County.

If within the guarantee period, repairs or changes are required in connection with the guaranteed work, which in the opinion of the Facilities Management Division Director is rendered necessary as the result of the use of materials, equipment or workmanship which are defective, or inferior, or not in accordance with the terms of the agreement, the Contractor shall promptly upon receipt of notice from the County, and without expense to the County:

- a. Place in satisfactory condition in every particular all of such guaranteed work, correct all defects therein.
- b. Make good all damage to the structure or site, or equipment or contents thereof, which in the opinion of the Facilities Management Division Director is a result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the agreement.
- c. Make good any work or materials, or the equipment and contents or structures or site disturbed in fulfilling any such guarantee.

In any case where, in fulfilling the requirements of the agreement or of any guarantee, embraced in or required thereby, the Contractor disturbs any work guaranteed under agreement, he shall restore such disturbed work to conditions satisfactory to the Facilities Management Division Director and guarantee such restored work to the same extent as it was guaranteed under the original agreement.

If the Contractor, after notice, fails to proceed within ten (10) working days to comply with the terms of the guarantee, the County may have the defects corrected and the Contractor and his surety shall be liable for all expenses incurred.

All special guarantees applicable to definite parts of the work which may be stipulated in the specifications or other papers forming a part of the agreement shall be subject to the terms of this paragraph during the first two (2) years of the life of such special guarantee. The Contractor hereby understands and agrees that none of the guaranties or warranties as to defects in materials, equipment, or workmanship set forth herein shall in any way limit or shorten the statutory limitations period during which the County can bring an action in law or equity against the Contractor for breach of this agreement. The Contractor further agrees that the limitations period for any action in law or equity which the County might bring against the Contractor for breach of this agreement shall not begin to run until the time at which the breach is actually discovered by the County.

18. **TERMINATION**

Leon County may terminate this Agreement without cause, by giving the Contractor thirty (30) days written notice of termination. Either party may terminate this Agreement for cause by giving the other party hereto

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thirty (30) days written notice of termination. The County shall not be required to give Contractor such thirty (30) day written notice if, in the opinion of the County, the Contractor is unable to perform its obligations hereunder, or if in the County's opinion, the services being provided are not satisfactory. In such case, the County may immediately terminate the Agreement by mailing a notice of termination to the Contractor.

19. **PUBLIC ENTITY CRIMES STATEMENT**

In accordance with Section 287.133, Florida Statutes, Contractor hereby certifies that to the best of his knowledge and belief neither Contractor nor his affiliates has been convicted of a public entity crime. Contractor and his affiliates shall provide the County with a completed public entity crime statement form no later than January 15 of each year this agreement is in effect. Violation of this section by the Contractor shall be grounds for cancellation of this agreement by Leon County.

20. **PROHIBITION AGAINST CONTINGENT FEES**

The Architect (or registered surveyor and mapper or professional, as applicable) engineer warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or other) to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working for the architect any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.

21. **NON-WAIVER**

Failure by the County to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement terminated shall not constitute a general waiver or relinquishment of the same, or of any other terms, conditions or acts; but the same shall be and remain at all times in full force and effect.

22. **REVISIONS**

In any case where, in fulfilling the requirements of this agreement or of any guarantee, embraced in or required thereby it is necessary for the Contractor to deviate from the requirements of the bid, Contractor shall obtain the prior written consent of the County.

23. **VENUE**

Venue for all actions arising under this agreement shall lie in Leon County, Florida.

24. **CONSTRUCTION**

The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida.

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WHERETO, the parties have set their hands and seals effective the date whereon the last party executives this Agreement.

CONTRACTOR

WITNESS: _____ BY: _____
President

WITNESS: _____ DATE _____

(CORPORATE SEAL)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____.

By _____, of _____,
(Name of officer or agent, title of officer or agent) (Name of corporation acknowledging)

a _____ corporation, on behalf of the corporation. He/she is personally
(State or place of incorporation)

known to me or has produced _____ as identification.
(type of identification)

Signature of Notary

Print, Type or Stamp Name of Notary

Title or Rank

Serial Number, If Any

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LEON COUNTY, FLORIDA

BY: _____
Cliff Thael, Chairman
Board of County Commissioners

DATE: _____

ATTEST:
BOB INZER, CLERK OF THE COURT
LEON COUNTY, FLORIDA

By: _____

APPROVED AS TO FORM:
LEON COUNTY ATTORNEY'S OFFICE

By: _____
Herbert W.A. Thiele, Esq.
County Attorney